



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 23, 1996

Mr. Jose R. Guerrero  
Montalvo & Ramirez  
Attorneys at Law  
900 North Main  
McAllen, Texas 78501

OR96-1248

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40542.

The La Joya Independent School District (the "district"), which you represent, received a request for information regarding an alleged assault upon a district student by a janitor. You claim that the requested information is excepted from required public disclosure under sections 552.101 and 552.114 of the Government Code.

We note, initially, that you state that the district's investigation of this matter was "preempted by Child Protective Services that stepped in to do their own investigation." Where the victim of a sexual assault or other sex-related offense is a child, section 261.201(a) of the Family Code may be applicable. Section 261.201(a) provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or

developed in an investigation under this chapter or in providing services as a result of an investigation.

Thus, if the information responsive to this request has been forwarded to the Child Protective Services, then we must conclude that these documents are reports of suspected abuse or records used in an investigation under chapter 261 of the Family Code, are confidential, and must be withheld in their entirety under section 552.101 of the Government Code.<sup>1</sup>

However, as we do not know whether the responsive information was forwarded to the Child Protective Services, we will address the arguments you have raised.

It appears that a portion of the records requested may be excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We remind you that this ruling applies only to "education records" under FERPA. "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).<sup>2</sup> Because you have

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>2</sup>*But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). *See also* Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

submitted to this office records which have not been de-identified, we have marked the portions of the documents which we conclude must be withheld under FERPA to avoid personally identifying the student. The remainder of these documents may not be withheld under FERPA or section 552.114 of the Government Code.

We next address your assertion that the requested information is excepted under section 552.101 in conjunction with the student's common-law right to privacy. Information is excepted from required public disclosure by a common-law right of privacy under section 552.101 if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We believe that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under the common-law right of privacy and section 552.101 of the Government Code. Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, we conclude that the same information we have marked as confidential under FERPA is also confidential under the student's common-law right to privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 40542

Enclosures: Marked documents

cc: Mr. Raymundo Lopez  
Garcia & Lopez  
214 West Cano Street  
Edinburg, Texas 78539  
(w/o enclosures)